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September 23, 2021

**Via ECF Filing & Fax**

The Hon. Cathy L. Waldor, U.S.M.J.  
Martin Luther King Jr. Courthouse  
50 Walnut Street  
Room 4040, Courtroom 4C  
Newark, NJ 07101

**Re: *SEC v. Vuuzle Media Corp., et al.*  
Civil Action No. 2:21-cv-1226**

Dear Magistrate Judge Waldor:

This letter serves as Defendant Vuuzle Media Corp.'s ("Vuuzle") request for an emergency conference with the Court to discuss a reasonable return date for the SEC's Motion for Preliminary Injunction.

On September 15, 2021, the SEC filed a Motion For Leave to File Its First Amended Complaint ("Motion to Amend"). Dkt. No. 45 through 45.4. Contemporaneous with the filing of their Motion to Amend, the SEC filed over two thousand pages comprising its Motion for Preliminary Injunction. Dkt. Nos. 46 through 49.2. The SEC listed both motions for an October 18, 2021 return date.

In its Motion for Preliminary Injunction, the SEC is asking this Court to enter an injunction against two non-parties that it is seeking to add via the simultaneous Motion to Amend. This is a non-sequitur. The Motion for Preliminary Injunction cannot be briefed or placed on the Court's return date schedule until the Court rules on the pending Motion to Amend. The SEC acknowledges in its Motion for Preliminary Injunction that the initial Complaint remains the operative pleading "unless and until the Court grants the SEC leave to file the Amended Complaint." Dkt No. 46, pp.2-3. Notwithstanding the SEC's acknowledgment, it made the Motion for Preliminary Injunction returnable the same day as the Motion to Amend. Counsel for Vuuzle raised this exact timing issue with the SEC and requested that the SEC stipulate to adjourn the Motion for Preliminary Injunction until the next return date schedule following the Court's decision on the Motion to Amend. See Ex. 1, email from Aimee Gibbs to Devon Staren dated September 20, 2021. The SEC declined to adjourn the Motion for Preliminary Injunction. See Ex. 1. Until the Motion to Amend is granted, which may not occur in whole or in part, the Motion for Preliminary Injunction is not ripe for disposition.

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In order to promote judicial economy and efficiency, Vuuzle respectfully requests that the Court adjourn the Motion for Preliminary Injunction return date. A staggered return date schedule avoids wasting judicial resources and eliminates requiring the Court and the parties to examine and respond to over two thousand pages of the SEC's preliminary injunction filing, which may be moot pending the Court's ruling on the proposed amended Complaint. Given the timing issue, and as a technical threshold issue, this Court should adjourn the Motion for Preliminary Injunction return date schedule until after the Motion to Amend is decided.

Moreover, the SEC did not provide adequate notice to your Honor or Defendants' counsel with respect to the motions.<sup>1</sup> First, the SEC failed to follow your Honor's procedural rules that no formal motions may be filed without leave of court. As stated of particular concern in your guidance: "[i]f a party wishes to file a formal motion, the basis for the motion must first be set forth in a letter to the court." See excerpt of *Survey of Judicial Officers* attached as Ex. 2. The SEC failed to provide a letter setting forth their intention and the basis for same with respect to the Motion to Amend or the Motion for Preliminary Injunction. Second, the SEC failed to provide a copy of the proposed amended complaint to Defendants until the day before it filed same with the Court and failed to ever mention that it would also be filing for injunctive relief.

On September 8, 2021, the SEC requested that the parties schedule a meet and confer. The SEC did not disclose the purpose for the meet and confer until the call. On September 13, 2021, the parties held the meet and confer during which the SEC asked whether the participating Defendants would concur with the SEC's Motion to Amend. The SEC did not provide a copy of the proposed amended complaint. During the meet and confer, Defendants requested a copy of the proposed complaint.<sup>2</sup> Defendants' counsel also subsequently notified the SEC that they would stipulate to an adjournment of the September 15<sup>th</sup> deadline to amend pleadings for thirty (30) days in order to allow Defendants adequate time to review and consider concurrence without thwarting the SEC's ability to file a motion to amend. See Ex. 3, email from Jay Surgent to Devon Staren dated September 14, 2021. The same day, on September 14, 2021, the SEC emailed a copy of the amended complaint and declined the proffered thirty (30) day extension. See Ex. 3. One day later, the SEC filed the Motion to Amend. Interestingly, the SEC did not mention anything about filing a Motion for Preliminary Injunction during the meet and confer.

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<sup>1</sup> And, the two new non-party proposed defendants, who we do not represent, will have no notice and could be enjoined if the Court agrees with the SEC before they are even served or given the opportunity to respond to the allegations in the Complaint.

<sup>2</sup> During the meet and confer, Defendants also requested copies of documents produced to the SEC pursuant to numerous subpoenas the SEC served on non-parties. The SEC has yet to produce the subpoenaed documents, but certain of the over ninety (90) exhibits attached to the SEC's Motion for Preliminary Injunction are believed to be the subpoenaed documents.

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Plaintiff's counsel knew full well that they were going to file for injunctive relief two days later, but said nothing.

In closing, adjourning the return date schedule for the Motion for Preliminary Injunction will serve judicial economy, and avoid misuse of judicial time and resources. For the reasons set forth in this letter, Vuuzle respectfully requests that the Court schedule an emergency pre-motion conference to discuss a reasonable return date for the SEC's Motion for Preliminary Injunction.

Very truly yours,

*Jacob S. Frenkel*

Jacob S. Frenkel

cc: Honorable Judge Katharine S. Hayden, U.S.D.J. (via ECF filing)  
All Counsel of Record (via ECF filing)

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